frontier

Michael J. Shortley, III
Senior Attorney and Director
Regulatory Services

180 South Clinton Avenue
Rochester, NY 14646
716 777-1028
716 546-7823 fax
716 777-6105

mjshortle@frontiercorp.com

DOCKET FILE COPY ORIGINAL

September 12, 1997

BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 94-129

Dear Mr. Caton:

Enclosed for filing please find an original plus eleven (11) paper copies plus one (1) electronic copy of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: International Transcription Service

Ms. Cathy Seidel (paper and disk)

Formal Complaints Branch (2)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber	)	
Carrier Selection Change Provisions	)	
of the Telecommunications Act of 1996	)	
	)	**CC Docket No. 94-129**
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

COMMENTS OF FRONTIER CORPORATION

Michael J. Shortley, III

Attorney for Frontier Corporation

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

September 12, 1997

Table of Contents

Summary

Frontier submits these comments on the Commission's Notice in this proceeding. The Commission is proposing to modify its existing rules governing changes in carrier selection procedures in light of recent experience with slamming and section 258 of the Act. While Frontier agrees that many of the changes that the Commission is proposing make sense, the Notice puts the cart before the horse. The first item of business for the Commission should be to develop a full understanding of the scope of customer changes in today's competitive environment. In Frontier's experience, the Commission does not possess a full understanding of the issue and the "statistics" that the Commission publishes convey this inadequate understanding.

Second, with minor changes described below, the current rules are adequate. The problem is not with the rules, it is with their enforcement. This problem exists in two respects: (a) there is no consistent process for determining at the front end whether a document denominated as a complaint is truly a complaint; and (b) the Commission needs to increase its enforcement response with respect to egregious slammers. Making both changes will accomplish much more to curb slamming.

Third, whatever rules the Commission adopts, it should make crystal clear what is already implicit -- namely, that it is prescribing uniform, nationwide rules from which the states are not permitted to deviate. While section 258(a) permits the state commissions to enforce this Commission's rules and section 258(b)

preserves remedies in addition to those that the Commission may award, section 258 makes clear that the Commission's regulations shall control what constitutes slamming.

Fourth, whatever regulations the Commission adopts, it must preserve a threshold fault requirement. In this automated world, mistakes will happen. An inputting error is just that -- an error. By no stretch of the imagination could such an error be considered a slam. Slamming is not a "no fault" offense -- it anticipates some level of intention or objective knowledge of the likelihood that a particular subscriber's preferred carrier is being changed against his/her will.

Fifth, the Commission should adopt four rule changes: First, only signed, *separate* letters of authorization or third-party validation should be the accepted means for processing PC changes. Second, the Commission should assign no responsibility to executing carriers to verify PC changes. Third, the Commission should require executing carriers promptly to process PC change orders without attempting to change the customer's mind. Fourth, the Commission should adopt a conclusive presumption that the retail carrier (the one with the direct interaction with the customer) is the entity that bears all responsibility for any slam, and not carriers who may provide service or facilities for the retail carrier.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber	)	
Carrier Selection Change Provisions	)	
of the Telecommunications Act of 1996	)	
	)	**CC Docket No. 94-129**
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

COMMENTS OF FRONTIER CORPORATION

Introduction

Frontier Corporation ("Frontier") submits these comments on the Commission's Notice[1] in this proceeding. The Commission is proposing to modify its existing rules governing changes in carrier selection procedures[2] in light of recent experience with slamming and section 258 of the Telecommunications Act of 1996 ("Act"). While Frontier agrees that many of the changes that the Commission is proposing make sense, the Notice puts the cart before the horse. The first item of business for the Commission should be to develop a full understanding of the scope of customer changes in today's competitive environment. In Frontier's experience, the Commission does not

---

1 *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Dkt. 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, FCC 97-248 (July 15, 1997) ("Notice").

2 *See* 47 C.F.R. § 64.1100 *et seq.*

possess a full understanding of the issue and the "statistics" that the Commission publishes convey this inadequate understanding.

Second, with minor changes described below, the current rules[3] are adequate. The problem is not with the rules, it is with their enforcement. This problem exists in two respects: (a) there is no consistent process for determining at the front end whether a document denominated as a complaint is truly a complaint; and (b) the Commission needs to increase its enforcement response with respect to egregious slammers. Making both changes will accomplish much more to curb slamming.

Third, whatever rules the Commission adopts, it should make crystal clear what is already implicit -- namely, that it is prescribing uniform, nationwide rules from which the states are not permitted to deviate. While section 258(a) permits the state commissions to enforce this Commission's rules and section 258(b) preserves remedies in addition to those that the Commission may award, section 258 makes clear that the Commission's regulations shall control what constitutes slamming.

Fourth, whatever regulations the Commission adopts, it must preserve a threshold fault requirement. In this automated world, mistakes will happen. An inputting error is just that -- an error. By no stretch of the imagination could such

---

[3] The current rules apply only to unauthorized changes of a consumer's long distance carrier. As the Commission correctly recognizes and as section 258 of the Act expressly requires (*see* Notice, ¶ 1), the rules that the Commission prescribes must apply to local as well as long distance carriers.

an error be considered a slam. Slamming is not a "no fault" offense -- it anticipates some level of intention or objective knowledge of the likelihood that a particular subscriber's preferred carrier ("PC") is being changed against his/her will.

Fifth, the Commission should adopt four rule changes: First, only signed, *separate* letters of authorization ("LOAs") or third-party validation should be the accepted means for processing PC changes. Second, the Commission should assign no responsibility to executing carriers to verify PC changes. Third, the Commission should require executing carriers promptly to process PC change orders without attempting to change the customer's mind. Fourth, the Commission should adopt a conclusive presumption that the retail carrier (the one with the direct interaction with the customer) is the entity that bears all responsibility for any slam, and not carriers who may provide service or facilities for the retail carrier.

Argument

I. THE COMMISSION NEEDS TO UNDERSTAND THE SCOPE OF THE SLAMMING ISSUE BETTER THAN IT DOES.

Before the Commission can take any meaningful action to curb slamming, the Commission must understand the scope of customer changes in today's competitive environment better than it currently does. Although the Commission states that it received over 16,000 slamming complaints last year,[4] and annually

[4] Notice, ¶ 6.

publishes its "Scorecard," neither provides a true picture of the extent or scope of slamming.

The Commission's 16,000 complaint figure likely overstates the magnitude of slamming. Frontier, for example, receives a variety of different types of complaints that are denominated as slamming complaints but, in reality, are not. Slamming complaints arise from a number of different transactions. Input errors by either the long distance carrier or the local exchange carrier -- where the telephone number is input incorrectly -- result in complaints. Similarly, Frontier has seen complaints from consumers that apparently made casual calls or used a calling card from a payphone presubscribed to Frontier, saw the name "Frontier" on the bill detail and claimed that they were slammed. Yet they undertook to make a call or calls with Frontier or a retail carrier procuring facilities from Frontier. These customers simply fail to understand the complex landscape that is telecommunications today. None of these transactions involve the intentional, unauthorized changes in consumers' preferred carriers, yet all apparently count as such in the Commission's evaluation of the issue.

The Commission's "Scorecard" is also inaccurate. The largest inaccuracy in the Scorecard is the failure to distinguish retail from wholesale carriers. For example, the 1995 Scorecard lists Frontier as one of the long distance carriers against whom the Commission received more than one hundred complaints. However, when the complaints that were actually directed against certain carrier-customers of Frontier are removed from the tally, Frontier would not have even

made the Commission's list.[5] Not only does the current process show Frontier in an unfavorable and unjustified light, it allows other carriers that may well be engaged in slamming to escape scrutiny.

As a first step in addressing the slamming issue, the Commission needs to develop a better understanding of the scope and magnitude of customer changes in today's competitive environment. The Commission's current information gathering and dissemination efforts do not provide the information necessary to address the issue.

II. THE COMMISSION NEEDS TO CRAFT ITS ENFORCEMENT POLICIES TO ADDRESS ONLY MERITORIOUS COMPLAINTS.

The Commission's current processes for addressing slamming complaints should be improved at both the front end and the back end. The Commission should modify its current procedures: (a) to process as informal complaints only those documents that qualify as such under the Commission's informal complaint rules; and (b) to take more aggressive action against the relatively small number of companies that are responsible for the bulk of the slamming incidents.

---

[5] Frontier concedes that when the Commission first receives such a complaint, it may very well not be able to tell that the complaint is misdirected. However, Frontier's responses to such complaints make this clear. The Commission should be willing to subtract as well as add from its slamming statistics. Yet, the Commission apparently fails to adjust its reports accordingly.

A. The Commission Should Enforce Its Informal Complaint Rules.

The Commission's informal complaint rules as to what constitutes a *prima facie* complaint are both clear and simple. A complainant must identify himself or herself and the carrier against which the complaint is directed; describe the alleged wrong; and state the specific relief requested.[6] Many of the informal complaints that the Commission forwards to Frontier fail this simple test. Often, the Commission is carbon-copied on a letter sent to the Company that may or may not even be comprehensible. Other correspondence may simply attach reams of bill pages without stating a "slamming" grievance (as opposed to a billing grievance), or without identifying any particular carrier -- including the carrier to whom the Commission forwards the complaint -- as the source of the alleged grievance.[7] Correspondence such as these do not constitute informal complaints, even under the Commission's simple rules.

Yet, such documents are forwarded to Frontier as slamming complaints and apparently count as such in the Commission's records. The Commission should sort correspondence to determine if it is a complaint about charges, if it involves a change in the PC at all, and which carrier is the retail service provider. The Commission should at least screen such documents to determine if they constitute *prima facie* informal complaints of slamming under the Commission's

---

[6] 47 C.F.R. § 1.716.

[7] For example, Frontier has received numerous complaints from the Commission where no carrier -- or other carriers -- are identified, but the attached bill pages may contain a line item showing a Frontier charge.

rules. If they do not, such documents should be treated as billing complaints under section 208, or should be returned to the sender with an explanation as to what the rules require or be treated as inquiries, not complaints. Processing such correspondence as informal slamming complaints not only places undue burdens on carriers, it presents an inaccurate picture as to the number and types of slamming complaints the Commission receives.

B. The Commission Should Continue Aggressively To Enforce Its Anti-Slamming Rules Against Egregious Offenders.

To its credit, the Commission has taken enforcement action against carriers that have engaged in significant violations of the Commission's anti-slamming rules. The Commission has issued notices of apparent liability, in fairly substantial amounts, against offending carriers.[8] The Commission's *Policy Statement on Forfeitures*[9] plainly indicates the Commission's willingness to continue to impose substantial monetary forfeitures on egregious offenders. The Commission has also demonstrated its willingness to begin the process to revoke section 214 authorizations in the most serious cases.[10] Frontier strongly agrees that these are appropriate enforcement responses to slamming.

---

8 *See* 1995 Scorecard.

9 *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules To Incorporate the Forfeiture Guidelines*, CI Dkt. 95-6, Report and Order, FCC 97-218 (July 28, 1997).

10 *See CCN, Inc.*, CC Dkt. 97-144, Order To Show Cause and Notice of Opportunity for Hearing, FCC 97-210 (June 12, 1997).

Nonetheless, the Commission should be prepared to pursue such actions even more aggressively. As the Commission is undoubtedly aware, there are other carriers still operating against which the Commission has not yet proposed to take enforcement action but who are involved in many state regulatory proceedings or other litigation, and that are the subject of numerous informal Commission complaints. When the Commission becomes aware of such egregious violations of the Act and of Commission regulations, the Commission should be prepared to take significant enforcement action.

III. THE COMMISSION SHOULD AFFIRMATIVELY PREEMPT STATE SUBSTANTIVE REGULATION OF SLAMMING.

The risk of state regulations and legislation being promulgated that are inconsistent with the Commission's existing rules regarding long-distance carrier changes and with the proposed rules regarding local carrier changes are substantial. Several states have recently enacted legislation addressed at slamming;[11] others have adopted regulations or practices that are inconsistent with the federal rules;[12] and yet others rely on general state deceptive practices statutes to address slamming.[13] In these circumstances, the likelihood of inconsistent and conflicting regulation approaches certainty.

---

11 *E.g.*, Alabama, New York, Texas, California and undoubtedly others.

12 *E.g.*, South Carolina, which will not accept third-party validation as a defense to a slamming complaint.

13 *E.g.*, Oregon, Vermont, New Jersey, among others.

In addition, in a growing number of cases, plaintiffs' lawyers are filing purported class actions that have no consistent thread of activity, and that, in reality, seek little more than attorneys' fees. These cases are typically filed under state statutory and common-law theories in order to evade the force of the Commission's regulations. Frontier itself is a defendant in two such suits, both of which involve conduct in which Frontier itself is not even the allegedly culpable company, but where one of its carrier-customers is.[14]

Obviously, it would be literally impossible for carriers to comply with a multitude of different and conflicting regulations, practices, laws and standards. This is particularly true for national carriers such as Frontier that operate in all fifty states, and that seek to complement operating efficiencies through nationwide or regional customer service centers, uniform processes and operational consistency. In such circumstances, prior precedent squarely favors the Commission's authority to occupy the field.[15]

Section 258 also provides the Commission with plenary authority to adopt substantive regulations governing changes in preferred carriers. In similar circumstances, the D.C. Circuit has upheld the Commission's assertion of preemptive authority.[16] The Court there held that, because section 276 of the

---

[14] *Moore v. Frontier Communications Services Inc.*, No. 4:97CV01136CAS (E.D. Mo.); *In re Long Distance Litigation*, No. CV-97-P-0668-S (N.D. Ala.).

[15] *E.g., Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990); *Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989).

[16] *Illinois Public Telecommunications Ass'n. v. FCC*, No. 96-1394 (D.C. Cir. July 1, 1997)

Act authorized the Commission to prescribe fair compensation for both intrastate and interstate payphone calls, the Commission possessed the authority to preempt state regulation of the local coin rate.[17] Here, section 258 of the Act vests in the Commission the authority to adopt regulations governing both local and long distance carrier change procedures. On its face, section 258 requires the Commission to promulgate national standards with preemptive effect.

Although section 258 contains savings provisions, these provisions are narrow and do not reserve any substantive authority to the states. Section 258(a) provides that "[n]othing in this section shall preclude any State commission from enforcing such [the Commission's] procedures with respect to intrastate services."[18]

The Act thus preserves to the State *commissions* the authority to be a partner with the Commission in enforcing *this Commission's* definitions and requirements. It does not authorize them to promulgate inconsistent regulations. It also does not grant enforcement authority to other state consumer protection agencies or departments (or so-called private watchdogs). In short, section 258(a) vests no substantive authority to regulate slamming in any body other than this Commission and it relegates the enforcement process to the Commission's complaint process and to parallel enforcement actions by state commissions with respect to (purely) intrastate matters.

---

17 *Id.* at 13-16.

18 47 U.S.C.§ 258(a).

Section 258(b) also provides that "[t]he remedies provided by this section are in addition to any other remedies available by law."[19] The Communications Act itself contains a more general savings provision -- section 414, which provides that:

> Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.[20]

The Commission must interpret the two sections in harmony. The Courts have consistently held that section 414 preserves only those causes of action that are independent of the obligations created by the Act. As the Southern District of New York has held:

> The savings clause of the Communications Act must be read to preserve only state claims that address obligations different from those created by the Communications Act. *See, e.g. Contronics, Inc. v. Puerto Rico Tel. Co.*, 553 F.2d 701, 707 n.6 (1st Cir, 1977) ("we read § 414 as preserving causes of action for breaches of duties distinguishable from those created under the Act."); *Ashley v. Southwestern Bell Tel. Co.* 410 F. Supp. 1389 (W.D. Tex. 1976) (holding that state-law action for invasion of privacy not preempted by the Communications Act.) In particular, the clause cannot plausibly be read in a manner that conflicts with the strict filing and charging duties imposed by the federal statutes, because such a reading of the clause would eviscerate those duties. *See Kellerman v. MCI Telecommunications Corp.* 172 Ill. 2d 428, 98 Ill. Dec. 24, 30, 493 N.E.2d 1045, 1051 ("it is implausible to think that Section 414 of the Act preserved all [s]tate-law remedies affecting intrastate telephone carriers no matter how repugnant those

---

19 47 U.S.C.§ 258(b).

20 47 U.S.C. § 414.

> [s]tate-laws are to the purposes and obligations of Congress."), *cert. denied,* 479 U.S. 949, 107 S. Ct. 434, 93 L. Ed. 2d 384 (1986). In other words, the Act cannot be read "to destroy itself." *Texas and Pacific R.R. Co. v. Abilene Cotton Oil Co,* 204 U.S. 424, 446, 27 S. Ct. 350, 357-58, 5 L. Ed. 553 (1907) (interpreting the Interstate Commerce Act), quoted in *Nader v. Allegheny Airlines, Inc.* 426 U.S. 290, 299, 97 S. Ct. 1978, 1984, 48 L. Ed. 2d 643 (1976) (interpreting the Federal Aviation Act). To the extent *Ivy* and *Norlight* hold that the Communications Act preempts common-law obligations inconsistent with the statute, these cases reflect an interpretation that has not been overruled and is controlling here.[21]

Thus, section 258(b)'s preservation of other remedies cannot be interpreted to preserve causes of action that are addressed by or inconsistent with section 258 or the Commission's implementing regulations. The Commission should explicitly confirm what section 258 and existing case law[22] already make clear -- namely, that the definitions and requirements that the Commission promulgates occupy the field.

IV. THE COMMISSION SHOULD EXPLICITLY ADOPT A FAULT STANDARD FOR THE PURPOSES OF ENFORCEMENT ACTION.

The Commission proposes to adopt a "but-for" standard for allocating responsibility among carriers for an unauthorized PC change.[23] While this approach may be acceptable for determining, as a matter of causation, which

---

21 *Marcus v. AT&T Corp.*, 938 F. Supp. 1158, 1168 (S.D.N.Y. 1996).

22 *See, e.g., Vermont v. Oncor Communications, Inc.*, 166 F.R.D. 313, 316 (D. Vt. 1996) (suit involving "slamming" claiming a violation of State Consumer Fraud Act only was properly removed.).

23 Notice, ¶ 35.

carrier should be held accountable, it fails to address the standard of liability in the first instance. The Commission's failure to address the liability standard could lead to an assumption that the existence of any unauthorized change in a consumer's carrier itself (or indeed, the fact of a billing from a carrier other than the customer's recognized PC) is enough to establish a violation of the Act and of the Commission's regulations. Frontier does not interpret the Commission's current rules or its proposed rules to adopt such a standard and does not believe that the Commission intended all such events to constitute slamming.[24] Nonetheless, the proposed rules may be subject to such a misinterpretation.

That result would be both unfortunate and unnecessary. Literally millions of PC change orders are processed each year and, with the existence of local competition, those numbers can only increase. Given this large volume of transactions, innocent mistakes are inevitable. A simple coding error, for example, can lead to one or more unauthorized carrier changes, even though no change was ever intended. In these circumstances, there is no policy or consumer protection justification for imposing liability on either the submitting or executing carrier.[25]

---

[24] *See id.*, ¶ 35 ("...our use of the 'but-for' test would not preclude us from examining the actions of the executing carrier where the facts suggest *malfeasance or wrongdoing* on the part of the executing carrier.") (emphasis added).

[25] Of course, the affected consumer should not be held liable for any carrier change charges.

At a minimum, the Commission should adopt an active or constructive intent standard to be used for remedies other than a refund of carrier change charges. The regulations should also require that the complainant bear the burden of persuasion that an unauthorized change of carrier occurred as the result of such an act on the part of a carrier. Such a rule is necessary to create incentives for carriers to obey the Commission's regulations, yet avoid potentially substantial penalties for entirely innocent conduct.

V. THE COMMISSION SHOULD MODIFY ITS PROPOSED RULES IN CERTAIN RESPECTS.

The Commission's proposed rules -- which largely mirror its existing rules -- are largely correct. Frontier addresses four areas in which the Commission should modify or clarify its proposed rules: (a) permissible verification procedures; (b) verification responsibilities of executing carriers; (c) implementation responsibilities of executing carriers; and (d) allocation of liability.

A. The Commission Should Narrow the Permissible Verification Options.

The Commission currently permits four methods of verifying changes in carriers: (a) a signed LOA; (b) an 800 call-back number; (c) third-party validation; and (d) a "welcome package."[26] In addition, current practice accommodates a consumer who chooses to contact a local exchange carrier

---

[26] *Policies and Rules Concerning Changing Long Distance Carriers*, CC Dkt. 91-64, Report and Order, 7 FCC Rcd. 1038 (1992), *recon. denied*, 8 FCC Rcd. 3215 (1993).

directly to change long distance carriers. The Commission should eliminate options (b) and (d).

As Frontier understands it, the 800 call-back option is rarely used. Thus, it appears simply to be an unnecessary option.

The welcome package,[27] however, is fraught with danger. It permits a submitting carrier to transmit a carrier change order without having the order verified and without having obtained the customer's consent. Rather, it assumes that the amount of the paper and the formula used in the letter provide insurance against aggressive conduct. As the Commission correctly recognizes,[28] this comes close to a negative option which the Commission has already affirmatively proscribed.[29] On this basis alone, its use should no longer be permitted.

With respect to signed LOAs, the Commission denied petitions for reconsideration of its 1995 Report and Order regarding the form and content of LOAs.[30] Frontier suggests that, in the context of this proceeding, the Commission make two changes.[31] *First,* the Commission should refuse to

---

27 Under current rules, a long distance carrier may contact a consumer, "obtain" authorization to change carriers, mail a welcome package that contains certain prescribed information, wait fourteen days and submit a carrier change order without ever receiving the customer's affirmative consent.

28 Notice, ¶¶ 16-18.

29 *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Dkt. 94-129, Report and Order, 10 FCC Rcd. 9560, 9565 (1995) ("1995 Report and Order").

30 Notice, ¶¶ 52-59.

31 Frontier believes that the Commission may make these changes in the context of implementing section 258 of the Act, which addresses both local and long

permit checks to be used as LOAs. Although the Commission's rules currently permit this practice, it is so subject to abuse such that it should not be permitted. *Second,* the Commission should require that the LOA be a *separate* -- not *severable* -- document that contains only the requisite information. An LOA should serve no other purpose than authorizing a carrier change. Marketing material should stand or fall on its own merits and not be linked to an LOA. Carriers should, of course, continue to be permitted to include both LOAs and marketing material in the same package. The Commission should also reinforce its policies proscribing PC changes that are procured with confusing or multi-purpose LOA cards and letters prepared by carriers.

B. The Commission Should Assign No Responsibility to Executing Carriers To Verify Change Orders.

As the Commission correctly notes:

> [W]e believe that Section 258 does not impose an independent requirement on executing carriers...to verify a PC-change request submitted by another carrier....Because the submitting carrier is guilty of slamming in most instances, we believe requiring that both the submitting and executing carriers verify PC changes would not likely lessen the number of slamming instances.[32]

---

distance carrier changes. The Act supersedes -- to some degree -- the Commission's existing regulations and those regulations apply only to changes of long distance carriers in any event. *See id.,* ¶ 43. If, however, the Commission believes that Frontier's suggestions should be addressed in the context of a petition for further reconsideration, Frontier requests that the Commission treat this portion of its comments accordingly.

[32] Notice, ¶ 14 n.47.

The Commission's discussion, however, appears to assume that only two carriers may be involved. That is not necessarily the case. In the long distance context, for example, there often are three carriers: a resale long distance carrier; its underlying facilities-based long distance carrier; and the local exchange carrier. In these circumstances, the resale carrier has the relationship with the end-user customer and submits the carrier change order. Often, that order is submitted in the first instance to the wholesale carrier that will, in turn, submit that carriers' change orders, together with its own orders, to the local exchange carrier. For purposes of allocating responsibility for slamming, it is critical for the Commission to understand the distinction and allocate responsibility appropriately. In particular, the Commission should make clear that the wholesale carrier is an "executing carrier" that is merely performing the ministerial task of forwarding orders from its carrier-customers to the local exchange carrier.

The underlying carrier does not -- and should not -- have any responsibility for verifying carrier change orders submitted by its carrier-customers. The wholesale carrier has no relationship with the end-user, is not involved in the resale carrier's marketing practices and should not be thrust in the role of the Commission's enforcement arm.[33]

---

[33] Such a result would completely frustrate the Commission's pro-competitive resale policies. *See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom., AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied,* 439 U.S. 875 (1980). Requiring wholesale carriers to police the marketing activities of their carrier customers would affirmatively discourage carriers from

C. The Commission Should Require Executing Carriers Promptly To Process Carrier Change Orders.

The Commission should require executing carriers -- principally, local exchange carriers -- promptly to execute carrier change orders. Particularly with the existence of local exchange competition and the anticipation on the part of each Bell company that it will soon enter into the long distance business, the Commission must ensure that incumbent local exchange carriers ("ILECs") do not frustrate consumer choice. ILECs currently have incentives to prevent customers from changing their local carrier and will have every incentive to promote their own, in-region long distance services. As the Commission notes:

> To avoid losing local customers, the incumbent LEC could potentially delay or refuse to process PC-change requests from local exchange competitors. A related concern is that a PC change may lead a carrier to engage in conduct that blurs the distinction between its role as executing carrier and its obligations as a marketplace competitor. For example, an incumbent LEC may send to its subscriber who has a chosen a new LEC a promotional letter in an attempt to change the subscriber's decision to switch to another carrier.[34]

ILECs have acted with respect to the former; their anticipation is leading to action related to the latter.[35]

---

offering their services on a resale basis, if for no other reason than being tarred by unlawful activity over which they have no control.

34 Notice, ¶ 15.

35 Pacific Bell, for example, engaged in a "win-back" campaign of the type described by the Commission before it was forced to abandon that campaign.

The Commission must ensure that these incentives are not channeled in anti-competitive directions and that offensive actions do not occur. Toward this end, the Commission should proscribe ILECs from engaging in practices such as "win-back" campaigns, delaying order entry and the like. If ILECs -- particularly the Bell companies and their incipient long distance affiliates or divisions -- wish to compete for customers on the merits, they should certainly be permitted to do so. What the Commission should proscribe is the ILECs' abuse of an undoubtedly dominant market position to hinder consumer choice in anticipation of some future opportunity to capture this customer.[36] The Commission should, therefore, require ILECs to process both local and long distance carrier change orders promptly -- and to do so without adding to the process some activity that seeks to entice customers to change their minds beforehand.[37]

D. The Commission Should Assign Exclusive Responsibility for PC Changes to the Retail Carrier.

The Commission should create a conclusive presumption that the retail carrier (the one with the direct interaction with the customer) bear the entire responsibility for any slam. As described above,[38] the retail carrier is the one

---

[36] The Commission also requests comment on whether it should constrain the ILECs' ability to accept PC freezes. Notice, ¶¶ 22-24. So long as ILECs act consistently with the Commission's proposed regulations (*id.*, ¶ 24) and with the comments contained herein, Frontier has no objection to the ability of carriers to offer PC freeze options.

[37] Frontier has no objection to ILECs -- like any other carrier -- communicating with customers *after* the fact. They should not, however, be permitted to hold carrier change orders while they attempt to change customers' minds.

[38] *See supra* at 16-17.